

**REMARKS**

Claims 1-25 were pending. New claims 26 and 27 are added herein, thus claims 1-27 are now pending. The applicant respectfully requests reconsideration and allowance of this application in view of the above amendments and the following remarks.

The applicant notes with appreciation the acknowledgement of the claim for priority under section 119 and the notice that all of the certified copies of the priority documents have been received.

The applicant acknowledges and appreciates receiving an initialed copy of the form PTO-1449 which accompanied the Information Disclosure Statement that was filed on April 15, 2004 and September 14, 2004.

Claims 4, 9, 12 and 18 stand rejected under 35 USC 112, second paragraph, as being allegedly indefinite. Without acknowledging the propriety of the rejection, the applicants have amended claims 4, 9, 12 and 18 to improve the clarity thereof.

In rejecting claims 4 and 18, the Examiner has indicated that how the invention works is not clear. The applicants are unaware of a requirement for the claims to recite how the invention works. In rejecting claims 9 and 12, the Examiner indicates that the claims fail to contain a positive recitation. It is established that negative limitations can satisfy 112, 2<sup>nd</sup> paragraph, see, e.g. *In re Wakefield*, 422 F.2d 897, 164 U.S.P.Q. 636. However, in general, the claims are rejected due primarily to an alleged lack of clarity.

Section 112, second paragraph requires that A) claims set forth subject matter applicants regards as the invention; and B) claims particularly point out and distinctly claim the subject matter of the invention. A rejection under section 112 requires evidence to support of A) and B). Since A) relies on subjective interpretation, B) necessarily forms the objective basis for a

rejection under this paragraph. Item B) requires an inquiry into the definiteness of the claim, e.g. whether the scope of the claim would be clear to a person of ordinary skill in the art (MPEP 2171).

Applicants submit that since the claims would have been clear to one of ordinary skill in the art as written, an objection would have been a more appropriate means to address clarity issues. For example, with regard to claims 4 and 18, the claimed feature of the controlling unit retaining one of enabling and disabling the use of the given function that is executed by the controlling unit just before the power is stopped, refers to the maintaining of the state of the Valet mode as described for example on page 10, line 12 of applicants specification. Accordingly, the claim would be clearly understandable to one of ordinary skill as referring to retaining one of the enabling and disabling the use of the given function, e.g. retaining the state prior to removal of main power. Thus the rejection is improper under 35 U.S.C. §112 second paragraph. Claims 4 and 18 however are amended herein to improve the clarity thereof.

With regard to claims 9 and 12, the claimed feature of the given function not including a function enabling the vehicle to travel, refers to preventing access to personal information by way of the given function when a vehicle has been enabled to travel, as described for example on page 2, line 24 of applicants specification. Accordingly, the claim would be clearly understandable to one of ordinary skill as referring to excluding enabling the given function from a function which enables the vehicle to travel. Although it might be possible to use different wording, the present wording results from translation and would have been understandable to one of ordinary skill within a reasonable degree of certainty. Thus, the rejection is improper under 35 U.S.C. §112 second paragraph. Claims 9 and 12 however are amended herein to improve the clarity thereof.

Without acknowledging the propriety of the rejection, applicants have amended the claims to improve the clarity thereof. Accordingly, claims 4, 9, 12 and 18 have been amended as to matters of form only to address the Examiner's concerns relating to clarity and not for reasons related to patentability. Thus, to the extent that the amendments are for clarification, the scope of claims 4, 9, 12 and 18 has not been narrowed within the meaning defined in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722 (2002).

Claims 1-25 stand rejected under 35 USC 102(b) as being allegedly anticipated by Murphy, U.S. Patent No. 6,232,874. The applicants respectfully request that this rejection be withdrawn for the following reasons.

Applicants note that independent claims 1, 11, 13 and 24 are amended herein to clarify the differences between the claimed invention and the prior art including Murphy. Claims 1, 11, 13 and 24 are amended to include, *inter alia*, that the use of the given function accesses personal information of a user of the vehicle. Support for the amendments can be found in applicants' specification, for example, on page 2, line 22; page 7, line 10; and page 8 line 10.

Unlike the applied reference, the present invention is for preventing access to personal information by someone, such as a valet. In Murphy, the system prevents or limits use of a vehicle by a restricted operator (RO). The system checks indicia of identification and performs control actions (see, e.g., col. 5, lines 33-65). A close review of Murphy fails to reveal a teaching or suggestion of the claimed feature of permitting or unpermitting the use of a given function which accesses personal information of a user of the vehicle. In this way, when a valet is using the vehicle, they are unpermitted to use the given function and thus cannot access the personal information of the user of a vehicle.

New claims 26 and 27, by virtue of depending from claim 1 are allowable for at least the reasons set forth above in connection with claim 1. Support for new claims 26 and 27 can be found for example in applicants' specification in the paragraph beginning on page 7, line 13. Favorable consideration is respectfully requested.

In view of the foregoing, the applicant respectfully submits that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

Please charge any unforeseen fees that may be due to Deposit Account No. 50-1147.

Respectfully submitted,



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